

PREAMBLE

PENNSYLVANIA MILK MARKETING BOARD

[7 PA. CODE CH. 150]

MILK MARKETING FEES

The Pennsylvania Milk Marketing Board (Board) proposes to amend Chapter 150 (relating to milk marketing fees) by increasing the license fees for milk dealers, subdealers, and haulers, and increasing the examination and certificate fees for weigher-samplers and testers.

A. *Effective Date*

This proposed rulemaking will be effective 30 days after final-form publication in the *Pennsylvania Bulletin*. Increases for new applicants will be effective when the proposed rulemaking is effective. Increases for renewal applicants will be effective for license years beginning on or after July 1, 2020. There is no sunset provision.

B. *Statutory Authority*

The Milk Marketing Fee Act (31 P.S. § 700k-1) (act) gives the Board the authority to charge and collect license fees. Sections 700k-3(c) (relating to milk dealers and subdealers), 700k-6 (relating to milk haulers), 700k-7 (relating to milk testers), and 700k-8 (relating to milk weighers and samplers) provide that the Board has the authority to set the fees by regulation.

C. *Purpose and Explanation*

The Board is self-funded, primarily by these fees. The Board has not received any general fund appropriations since the 1996-1997 fiscal year. The fees have not been increased since January 2004. The fees and any other funds received by the Board are paid into the State Treasury and placed in the Milk Marketing Fund (Fund). Despite the Board's careful

stewardship, expenses have increased substantially in these 15 years, while income has not. The Fund is being eroded by the resulting deficits. Without this fee increase, the Board's financial viability will become uncertain. Further details are available in the Regulatory Analysis Form for this proposed rulemaking, which is available at www.irrc.state.pa.us or from the contact person designated below.

Section 150.3 is proposed to be deleted because the classification transition described in that regulation was implemented and completed by the Board as described in the regulation.

D. *Description of the Amendments*

The Board currently licenses about 42 milk testers and 1,388 milk weigher-samplers. Their licenses are designated in the act and regulations as "certificates." Their annual certificate renewal fees will increase from \$20 to \$25. The examination fee for a new milk tester or weigher-sampler will increase from \$25 to \$30 and the certificate fee from \$20 to \$25.

The Board currently licenses about 184 milk haulers. Their annual license renewal fees will increase from \$30 to \$35. The license application fee for a new milk hauler will also increase from \$30 to \$35.

The Board currently licenses about 163 milk subdealers. Their annual fixed license renewal fees will increase from \$25 to \$50. The fixed license application fee for a new subdealer will still be \$50 but will no longer be prorated based on the time of year the license is issued. Their volume-based additional fee (designated as the "quart-equivalent fee") will increase twenty-five percent to a maximum of \$1,750, and will be calculated on the basis of milk sold, not milk purchased.

The Board currently licenses about 180 milk dealers. Their annual fixed license renewal fees will increase from \$50 to \$100. The annual fixed license application fee for a new dealer will

still be \$100 but will be prorated semi-annually instead of quarterly based on the time of year the application is submitted. In addition to the fixed fee, there are fees per hundred pounds of milk. These fees will increase from \$0.045 per hundredweight (cwt) to \$0.060 cwt for controlled products (products for which the Board sets prices), and from \$0.0057 cwt to \$0.0064 cwt for non-controlled products.

E. *Fiscal and Administrative Impact*

The licensees described in section D above are the persons and parties affected by this proposed rulemaking.

The milk dealers are projected to pay a combined total of about \$370,000 to \$385,000 per year more than they would under the current fee structure. The milk subdealers are projected to pay a combined total of about \$8,500 per year more than they would under the current fee structure. The milk haulers are projected to pay a combined total of about \$950 per year more than they would under the current fee structure. The milk weigher-samplers are projected to pay a combined total of about \$8,195 per year more than they would have under the current fee structure. The milk testers are projected to pay a combined total of about \$325 per year more than they would have under the current fee structure. These are projected estimates.

These fees are not new fees – they are increases in existing fees. Therefore the administrative impact is not expected to be significant. Subdealers will calculate their fees based on the volume of milk products sold, which is information that is obviously readily available, instead of having their fees calculated on the basis of milk products purchased, and therefore this is not expected to result in a significant administrative impact.

F. *Public Hearing*

A public hearing was held on May 23, 2019 at the Farm Show Complex in Harrisburg. Notice of the hearing was published in the *Pennsylvania Bulletin*, posted on the Board's website, and sent to the Board's network of more than 300 licensees, trade organizations, stores, individuals, and media who receive communications from the Board by email or mail. The Board received written communication only from the Pennsylvania Association of Milk Dealers (PAMD), who supported the amendments. At the hearing, the only attendees (other than the Board and Board personnel) were an attorney representing PAMD and an attorney and another person representing the Pennsylvania Association of Dairy Cooperatives (PADC). The PAMD attorney endorsed the letter it had already sent to the Board. The PADC attorney said there has been no opposition from its members. Tim Moyer, the Secretary of the Board, gave a statement supporting the proposed amendments.

G. *Regulatory Review*

On _____, 2019, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairs of the House and Senate Committees on Agriculture and Rural Affairs, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, the IRRC may convey any comments, recommendations, or objections to the proposed rulemaking within 30 days after the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of this proposed rulemaking, by

the Board, the General Assembly, and the Governor of comments, recommendations or objections raised.

H. *Public Comments and Contact Person*

Interested persons are invited to submit written comments, suggestions, support, or objections about this proposed rulemaking to the Board, to the attention of Douglas Eberly, Chief Counsel, Pennsylvania Milk Marketing Board, 2301 N. Cameron Street, Harrisburg PA 17110, or by email to ra-pmmb@pa.gov, within 30 days after publication in the *Pennsylvania Bulletin*. Anyone who requires this information in a different format may call (717) 787-4194 or (800) 654-5984 which is the PA relay service for TDD users.

ROBERT N. BARLEY

Chairman

ANNEX A
TITLE 7. AGRICULTURE
PART VI. MILK MARKETING BOARD
CHAPTER 150. MILK MARKETING FEES

GENERAL PROVISIONS

§ 150.3. **Reserved**. [Classification of licenses—statement of policy.

It is the policy of the Board to establish a license classification system that reflects the changes occurring in the market conditions and business characteristics of the dairy industry. The Board anticipates implementation of changes in the license classification system that will go into effect during the license year 2001—2002. The Board's proposed changes will eliminate the license classifications of importing retailer, importing distributor, broker, receiving station and subdealer store. In order to reduce the administrative burden of calculating and refunding license fees during the license year to those entities that will not be required to be licensed under the new license classification system, it is the Board's intent to notify those entities currently licensed as an importing retailer, importing distributor, broker, receiving station or subdealer store that they are not required to complete and file a license application for the license year 2001—2002 and any succeeding license years.]

LICENSE FEES OF MILK DEALERS

§ 150.11. **Fixed fees.**

(a) A new applicant for a milk dealer's license shall pay a fixed fee of \$100 **for applications submitted before January 1 of the license year for which the application is submitted, and \$50 for applications submitted on or after January 1** [for a license issued on or after July 1 but before October 1 of the same year or a proportionate fixed fee as follows:

- (1) \$75 for a license issued on or after October 1 but before January 1 of the succeeding year.
- (2) \$50 for a license issued on or after January 1 but before April 1 of the same year.
- (3) \$25 for a license issued on or after April 1 but before July 1 of the same year].

(b) An applicant for annual renewal of a milk dealer's license shall pay a fixed fee of **\$100** [50].

§ 150.12. **Hundredweight fees.**

(a) In addition to the fixed fee imposed under § 150.11 (relating to fixed fees), a milk dealer that was licensed for the entire calendar year preceding license renewal shall pay an annual hundredweight fee as set forth in paragraphs (1) and (2).

(1) For milk for which the Board has fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the calendar year preceding the period for which the license is issued, the fee is **\$.060** [045] per hundredweight.

(2) For milk for which the Board has not fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the calendar year preceding the period for which the license is issued, the fee is **\$.0064** [0057] per hundredweight.

(b) In addition to the fixed fee imposed under § 150.11, a milk dealer that was not licensed for the entire calendar year preceding license application or renewal shall pay a monthly hundredweight fee as set forth in paragraphs (1) and (2). Monthly payments shall continue until the milk dealer has been licensed for an entire calendar year and for each month thereafter until the next license year begins. Annual payments shall then commence under subsection (a).

(1) For milk for which the Board has fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the preceding month, the fee is **\$.060** [045] per hundredweight.

(2) For milk for which the Board has not fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the preceding month, the fee is **\$.0064** [0057] per hundredweight.

LICENSE FEES OF MILK SUBDEALERS

§ 150.21. Fixed fees.

(a) A new applicant for a subdealer's license shall pay a fixed fee of \$50 [for a license issued on or after July 1 but before October 1 of the same year or a proportionate fixed fee as follows:

- (1) \$37.50 for a license issued on or after October 1 but before January 1 of the succeeding year.
- (2) \$25 for a license issued on or after January 1 but before April 1 of the same year.
- (3) \$12.50 for a license issued on or after April 1 but before July 1 of the same year].

(b) An applicant for annual renewal of a subdealer's license shall pay a fixed fee of **\$50** [25].

§ 150.22. Quart-equivalent fee.

(a) In addition to the fixed fee imposed under § 150.21(b) (relating to fixed fees), an applicant for annual renewal of a subdealer's license shall pay an annual quart-equivalent fee calculated by dividing the total quarts of milk **sold** [purchased] during the previous calendar year by the number of months in which the subdealer engaged in business. The Board will assess the fee in accordance with the following schedule:

<i>Ave. Qts. [Purchased] Sold Per Month</i>	<i>Annual Fee</i>
1— 29,999	\$ 62.50 [50]
30,000— 59,999	125.00 [100]
60,000—119,999	187.50 [150]
150,000—199,999	312.50 [250]
200,000—299,999	375.00 [300]
300,000—399,999	500.00 [400]

400,000—599,999	625.00 [500]
600,000—799,999	1000.00 [800]
800,000—999,999	1500.00 [1200]
1,000,000 and over	1750.00 [1400]

(b) As used in subsection (a), “quarts” means the total volume of milk for which the Board sets a [wholesale] price expressed in quart equivalents.

LICENSE FEES OF MILK HAULERS

§ 150.51. Fixed fees.

A new applicant for a milk hauler’s license and an applicant for annual renewal of a milk hauler’s license shall pay a fixed fee of **\$35** [30].

CERTIFICATION FEES OF MILK TESTERS

§ 150.61. Examination fee.

The fee to take the Board-approved examination for a certificate of proficiency in milk testing is **\$30** [25], payable when the examination is taken. The examination fee is not refundable and may not be applied toward payment of the fixed fees in § 150.62 (relating to fixed fees for new and renewed certificates).

§ 150.62. Fixed fees for new and renewed certificates.

A new applicant for a milk tester’s certificate and an applicant for renewal of a milk tester’s certificate shall pay a fee of **\$25** [20], which shall accompany the milk tester certificate application (available from the Board Office or website).

CERTIFICATION FEES OF MILK WEIGHERS AND SAMPLERS

§ 150.71. Examination fee.

The fee to take the Board-approved examination for a certificate of proficiency in milk weighing and sampling is **\$30** [25], payable when the examination is taken. The examination fee is not refundable and may not be applied toward payment of the fixed fees in § 150.72 (relating to fixed fees for new and renewed certificates).

§ 150.72. Fixed fees for new and renewed certificates.

A new applicant for a milk weigher and sampler's certificate and an applicant for renewal of a milk weigher and sampler's certificate shall pay a fee of \$25 [20], which shall accompany the milk weigher/sampler certificate application (available from the Board Office or website).
